

of the Act. *See Order*, at 14. But the Commission then pirouettes and concludes somehow that Beehive ignores a “fundamental difference” between §§ 251(c)(3) and 203(c) of the Act, and that the invalidation of the SMS Tariff would deprive access to the SMS/800 system to entities that are ineligible under § 251(c)(3). *See id.* What are we missing here?

This seemingly interminable dispute should have ended once the Commission recognized the SMS/800 as a network element. That recognition leads unavoidably, almost syllogistically, to detariffing. To begin with, the BOCs are treated as a telecommunications provider. *See Order* at 10. Any provider of telecommunications is a telecommunications carrier. *See* 47 U.S.C. § 153(44). A telecommunications carrier can be regulated as a common carrier “only to the extent that it is engaged in providing telecommunications services.” *Id.* The BOCs are not providing a telecommunications service when they offer access to the SMS/800. *See id.* § 153(44), (46). They are providing access to a network element: a database “used in the transmission, routing, or other provision of a telecommunications service.” *Id.* § 153(29). Thus, the Commission cannot treat the BOCs as a common carrier by subjecting their SMS/800 access service to tariff regulation under § 203. “[O]nly common carrier activity falls within the Commission’s regulatory powers under title II” of the Act. *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1483 (D.C. Cir. 1994).

What is most astonishing is the Commission’s statement that striking down the SMS Tariff would “effectively deny” access to the SMS/800 to ineligible entities. Invalidating the tariff in the process of implementing § 251(e) will not deprive any entity access to the SMS/800. The process will place the SMS/800 database system in the hands of an impartial, neutral administrator, rather than a recognized “monopolist.” *Beehive Tel. Co., Inc. v. FCC*, 179 F.3d 941, 944 (D.C. Cir 1999). Any entity should be able to access the SMS/800 either directly or indirectly through the impartial

administrator. And since the system presumably would not be operated by an ILEC, access to the SMS/800 database would not be available under § 251(c).

The Commission gives lip service to the fundamental changes in the local exchange marketplace brought on by the Telecommunications Act of 1996. *See Order*, at 10-11. Under that statute, the Commission was supposed “to foster competition in *all* telecommunications services, including toll free, through neutral numbering administration.” *1996 Act Implementation*, 11 FCC Rcd at 19510 (emphasis in original). Yet, for reasons apparently unrelated to its statutory obligations, the Commission continues to allow the administration of toll free numbers, a public resource, to be offered as a for-profit, monopoly service by the BOCs. The inescapable fact of the matter is that the present structure of toll free number administration is fundamentally at odds with the policies espoused by the Commission, as well as its precedents.

An acknowledged purpose of § 251(e) was to ensure “fair and impartial access to numbering resources.” *Id.* at 19508. Not only was numbering administration to be fair and impartial, but it was to be free from the “appearance of bias” associated with entities that “historically have been closely associated with LECs.” *NANP Order*, 11 FCC Rcd at 2613. Here we are years later and the power to allocate the costs of toll free numbering administration is in the hands of the nation’s four largest ILECs by virtue of the SMS Tariff. The appearance of bias in that arrangement is palpable.

The SMT members are aware of the conflict of interest that is inherent in the fact that their employers utilize the SMS/800 database, own and operate SCPs, and compete in the toll free market. As part of the discussion during the New York meeting this year, SMT members found it necessary to state that “even though within their companies, they may be responsible for services provided through the Service Control Points (SCPs), as SMT members their focus is on SMS/800 services.”

SMT Mar. 9-10, 2000 Meeting Notes at 1. Because they are responsible for services provided by the SCPs, the SMT members are biased toward keeping the costs allocated to the SCP owners as low as possible. And it is the SMT that supervises the accountants (Mendonca & Suarez), coordinates with the auditor (KPMG), and directs the rate consultant (Charlie Rizzo).^{42/} Not surprisingly, therefore, the cost allocation methodology employed by the BOCs for rate development distributes only 7% of the costs of the SMS/800 system to the BOCs and the other SCP owners.^{43/}

As long as the administrative costs of operating the SMS/800 system are managed and allocated by the BOCs on a for-profit basis, the administration of toll free numbers will be neither impartial nor equitable. An administrator with a substantial pecuniary interest in the outcome of numbering administration and activities cannot be deemed or perceived to be impartial and neutral. *See* 47 C.F.R. § 52.12(a)(1)(iii). In the same vein, administrative costs that are allocated among competitors by an administrator with a financial interest in the outcome of the allocation cannot be deemed or perceived to be “competitively neutral.” 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.17. For that reason, the Commission should revisit its startling decision that the costs of toll free numbering administration can be allocated by the BOCs so they are *not* “borne by all telecommunications carriers on a competitively neutral basis” as mandated by § 251(e)(2) of the Act. *See* Order, at 15.

C. The Commission Must Explain Its Departure From
 The Text Of § 251(e)(2) And its Prior Decisions

When it departs from preexisting policies and governing precedents, the Commission must

^{42/} *See* SMT Jan. 21-22 Meeting Notes, at 6-7; SMT Feb. 3, 1999 Conference Notes, at 2; SMT Nov. 3, 1999 Conference Call Notes, at 1-3; Wade Dep. Tr. at 181-83.

^{43/} *See* Transmittal No. 13, Description and Justification, at Table 4 (Jan. 5, 1998).

explain the reasons for its departure with “forthrightness and clarity.” *WLOS TV, Inc. v. FCC*, 932 F.2d 993, 998 (D.C. Cir. 1991). Such an explanation is due here, because the Commission inexplicably walked away from the explicit language of § 251(e)(2), policies dating back to 1996, and an impressive line of controlling precedent.

Disregarding the text of § 251(e)(2), and citing no support in the legislative history, the Commission simply stated that it did not “believe” that Congress intended to require carriers that do not use the SMS/800 system to bear its administrative costs. *Order*, at 15. The Commission’s new-found belief led it to blithely depart from precedent that consistently interpreted § 251(e)(1) to mean exactly what it says.^{44/} By allowing the costs of toll free number administration to be imposed on RespOrgs that are not telecommunications carriers, the Commission overruled the interpretation it gave § 251(e)(2) in *1996 Act Implementation*, where it held that *only* telecommunications carriers must contribute to the costs of numbering administration. *See* 11 FCC Rcd at 19541.

The Commission jumped to the conclusion that the recovery of the costs of the SMS/800 system under the SMS Tariff would be “competitively neutral” without evidencing the slightest concern that the BOCs could take competitive advantage of their power to set the tariffed rates. Nor did the Commission give the slightest consideration of the two-part test it usually applies to determine whether the costs of numbering administration will be borne on a competitively neutral basis. *See, e.g., Numbering Resource Optimization*, 15 FCC Rcd at 7664. Rather, the Commission relied solely on the “long-standing principle that costs should be borne by the cost-causer.” *Order*,

^{44/} *See Numbering Resource Optimization*, 15 FCC Rcd 7574, 7665 (2000); *1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements*, 14 FCC Rcd 16602, 16634 (1999); *Telephone Number Portability*, 13 FCC Rcd 11701, 11733 (1998); *1996 Act Implementation*, 11 FCC Rcd at 19541; *Telephone Number Portability*, 11 FCC Rcd 8352, 8419 (1996).

at 15. That reliance is surprising considering the Commission's prior determination that § 251(e)(2) is a congressional directive to "depart from cost causation principles" and constitutes a "rare exception" to the principle that costs should be paid by the cost-causer. *Telephone Number Portability*, 11 FCC Rcd at 8419-20.

Just four months before the *Order* was released, the Commission reconfirmed that § 251(e)(2) dictates that the costs to operate a database for number administration be shared by all telecommunications carriers, not recovered through per-number charges to entities that use the database." *Numbering Resource Optimization*, 15 FCC Rcd at 7668. If there is a rational explanation for treating the industry costs of toll free numbering administration differently, the Commission should share it with the public, the parties to this proceeding, and the District Court. It helps no one, and particularly not the District Court, when the Commission decides the issues by conclusory statements and *ipse dixit* reasoning.

For all the foregoing reasons, Beehive respectfully requests that the Commission vacate its *Order* and adopt rules to implement §251(e) of the Act in a manner consistent with the facts, governing precedent, and the nation's pro-competitive, deregulatory telecommunications policy.

Respectfully submitted,

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By: _____



Russell D. Lukas
Its Attorney

August 9, 2000

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27 ALSO PRESENT:
28 CATHY SEYMOUR
29 ART BROTHERS (BY PHONE)
30
31 (Index appears following the transcript.)

1 Q. And before that were you employed at
2 DSMI as well?
3 A. No, I've been the president since DSMI
4 was formed. Prior to that I was with Bellcore.
5 Q. How long were you at Bellcore?
6 A. About nine years, I guess.
7 Q. Okay. You say you became president of
8 DSMI when it was formed. Was that in 1983?
9 A. No.
10 Q. Or 1993, excuse me.
11 A. '93.
12 Q. April of '93?
13 A. Right.
14 Q. And have you had any other positions
15 as an officer aside from or in addition to
16 president at DSMI?
17 A. I'm not sure what you're asking.
18 Q. Have you served at DSMI in any
19 capacity other than president?
20 A. No.
21 Q. Have you been on the board of

1
2 PROCEEDINGS
3
4 Whereupon --
5 MICHAEL WADE
6 a witness, called for examination, having been
7 first duly sworn, was examined and testified as
8 follows:
9 EXAMINATION
10 BY MR. SMITH:
11 Q. Please state your name for the record
12 and spell it.
13 A. Michael Wade. Michael is
14 M-I-C-H-A-E-L and Wade is W-A-D-E.
15 Q. Middle initial?
16 A. J.
17 Q. What does that stand for?
18 A. James.
19 Q. What's your present residential
20 address, Mr. Wade?
21 A. Summit, New Jersey.

1 directors at DSMI at any time?
2 A. As president I'm on the board of
3 directors, but a nonvoting member.
4 Q. Okay. Have you ever voted on the
5 board? Have you ever been a voting member of the
6 board?
7 A. No.
8 Q. Okay. As a nonvoting member of the
9 board of directors of DSMI, are you entitled
10 otherwise fully to participate at board meetings
11 and in board deliberations?
12 A. As far as I know.
13 Q. Okay. What position did you hold at
14 Bellcore starting at the beginning of your
15 nine-year tenure there and moving forward?
16 A. Initially I was what they called a
17 member of the technical staff working on 800
18 number portability.
19 Q. Can you give me some time frames as
20 you describe what you did, when you started
21 technical staff?

1 Q. How about a business address?
2 A. Three Corporate Place in Piscataway,
3 New Jersey.
4 Q. What is your present employment, your
5 job?
6 A. I'm president of Database Service
7 Management Incorporated, DSMI.
8 Q. Okay. Now I'm going to call it DSMI,
9 if that's okay with you.
10 A. Uh-huh.
11 Q. In some of the questions that I'll
12 ask, I'll have a tendency, Mr. Wade, to say
13 "you." What I mean when I say "you" usually will
14 be DSMI. I'll try to keep that straight so that
15 we can communicate clearly together. If there's
16 any question in your mind, let's talk. Feel free
17 to ask me precisely so that we get precise
18 communication.
19 How long have you been the president
20 of DSMI?
21 A. Seven years.

1 A. Well, I started in December of '94 --
2 no, I'm sorry -- no, that's right, December of
3 '94. I was a member of the technical staff for,
4 I don't know, three years maybe, something like
5 that.
6 Q. December of '94. You mean --
7 A. December of '84, I'm sorry.
8 Q. Okay. And then you served on the
9 technical staff for how long?
10 A. Probably three years.
11 Q. Okay. Then after that what did you do
12 at Bellcore?
13 A. I was a district manager for 800
14 number portability for probably -- I don't know
15 how many years. A few years. I don't know.
16 Maybe three or four years, something like that.
17 Then I spent two years as the secretary to a
18 national team called The National Services
19 Coordinating Group, which was a team of RBOC
20 representatives, and then I went back to working
21 on number portability or 800 number portability

Page 5

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15 as an officer aside from or in addition to
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17 A. I'm not sure what you're asking.

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19 capacity other than president?

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Page 6

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18 national team called The National Services
19 Coordinating Group, which was a team of RBOC
20 representatives, and then I went back to working
21 on number portability or 800 number portability

Page 8

1 again.

2 Q. In what capacity?

3 A. Probably in '91 or something like that
4 I went back to number portability.

5 Q. In what capacity did you serve then
6 from '91 on?

7 A. As a director for implementation.

8 Q. Okay. When you served as a district
9 manager, what were your job responsibilities?

10 A. In '91?

11 Q. Well, you said you started in '94,
12 December, and were on the technical staff at
13 Bellcore for about three years, and then after
14 that you said you served as district manager at
15 Bellcore.

16 A. Right.

17 Q. My question is, what were your job
18 responsibilities as district manager at Bellcore?

19 A. At that time frame, as I recall, we
20 were working with the RBOCs and the industry to
21 try and get 800 number portability put in place.

Page 9

1 I mean, my main responsibility at that time would
2 have been as an interface to the RBOCs.

3 Q. Why don't you define RBOCs for the
4 record?

5 A. Regional Bell Operating Companies.

6 Q. Describe the nature of this
7 interfacing between Bellcore with you as district
8 manager and the RBOCs as far as number of
9 portability. What were you doing?

10 A. The RBOCs were in the process of
11 deploying common channel signaling networks and
12 database networks to support 800 number
13 portability. Bellcore at the time was their
14 research and technical development/software
15 development organization, so our function and my
16 group was to coordinate the activities of the
17 Bellcore teams in support of the RBOC deployment
18 plans.

19 Q. Why were you called "district
20 manager." Did that mean you had a certain
21 geographic area where you served?

Page 10

1 A. No, they have a title structure that
2 matched the structure that the RBOCs had, but it
3 just meant that I was supervisor of three or four
4 people.

5 Q. I see. After you left the district
6 manager position, you say you served for about
7 two years on a coordinating committee NSCC?

8 A. CG.

9 Q. CG excuse me. When you served in
10 that capacity, were you still a Bellcore
11 employee?

12 A. Yes.

13 Q. Okay. Describe this NSCG for us.

14 A. It was a group of RBOC representatives
15 who, again, were responsible for coordinating
16 activities associated with national services,
17 services that needed to be deployed consistently
18 across the country. Since at the time, again,
19 most of those services were dependent upon
20 Bellcore software and Bellcore implementation
21 support, they had a Bellcore person act as their

Page 11

1 secretary and coordinator.

2 Q. Okay. Have you ever had your
3 deposition taken before?

4 A. Yes.

5 Q. Okay. While you were president of
6 DSMI?

7 A. Yes, I was.

8 Q. Okay. When was it taken?

9 A. I don't remember. It would have been
10 mid-90s probably.

11 Q. Was it taken in connection with
12 litigation, a court contest?

13 A. I don't know how to respond to that.

14 Q. Was DSMI one of the parties in the
15 case where your deposition was taken?

16 A. I don't believe so.

17 Q. Were one or more of the RBOCs parties
18 in the litigation where your deposition was
19 taken?

20 A. No.

21 Q. Do you remember what the issue was in

Page 12

1 the litigation?

2 A. The issue had to do with protection of
3 Bellcore propriety documents and an ex-employee.

4 Q. I see. And was it the ex-employee's
5 attorney who asked for your deposition?

6 A. Uh-huh, yes.

7 Q. Any other times you've had your
8 deposition taken while being an employee of DSMI?

9 A. No.

10 Q. Okay. Have you ever testified in a
11 court proceeding for DSMI or in relation to your
12 employment at DSMI other than this litigation
13 with Beehive?

14 A. No.

15 Q. How about testimony before an agency
16 like the FCC? Have you done that while serving
17 as president of DSMI?

18 A. I'm not sure what counts as testimony
19 in front of the FCC.

20 Q. Anything sworn.

21 A. No.

Page 13

1 Q. Affidavits or depositions or appearing
2 at a hearing. All of that is included in my
3 question. With that clarification, do you still
4 have the same answer?
5 A. Yes.
6 Q. Same answer, yes?
7 A. Yes.
8 Q. The answer is still no?
9 A. Right.
10 Q. Okay. I understand. Are you of sound
11 mind this morning, Mr. Wade? No one has filed a
12 petition against you to have you committed to any
13 asylum to your knowledge? Is that a fair
14 statement?
15 A. Not that I know of.
16 Q. You're not taking any drugs or
17 medication that would impair your judgment or
18 ability to answer?
19 A. No.
20 Q. Okay. When DSMI was organized in
21 April of 1993, was it organized as a corporation?

Page 14

1 A. Yes.
2 Q. Was the place of organization
3 New Jersey?
4 A. I'm not sure what you're asking.
5 Q. Was it organized as a New Jersey
6 corporation?
7 A. No.
8 Q. What state was it organized in?
9 A. It's a Delaware corporation.
10 Q. Has it always been a Delaware
11 corporation ever since?
12 A. Yes.
13 Q. Has it ever had a name change?
14 A. No.
15 Q. Has it ever gone under any DBA or
16 trade name since organization?
17 A. No.
18 Q. Has it ever changed its principal
19 place of doing business since organization?
20 A. I'm not sure of that. I'm not sure
21 how the principal place is listed.

Page 15

1 Q. Where are its main offices today? In
2 New Jersey?
3 A. They're in New Jersey.
4 Q. The address you gave me before when I
5 asked for your business address?
6 A. I don't know that, actually. I mean,
7 that's where we do business. It may be that it's
8 listed where the other Telcordia subsidiaries are
9 headquartered, which is Morristown. I'm not sure
10 what the legal company address is.
11 Q. Okay. Morristown?
12 A. New Jersey.
13 Q. Prior to DSMI's becoming affiliated
14 with whoever bought Bellcore, were you
15 headquartered -- "you" meaning DSMI, at a place
16 other than your present business address?
17 A. We were originally located in
18 Livingston, New Jersey, but then that building
19 closed.
20 Q. Okay.
21 A. And we moved.

Page 16

1 Q. From Livingston you moved to the
2 present place?
3 A. We actually moved to another location
4 in Piscataway and then have since moved.
5 Q. Okay. But all the places where you've
6 had offices and your commuter capacity and what
7 you do generally, that's been in New Jersey from
8 the inception; is that correct?
9 A. Yes.
10 Q. Okay. Aside from yourself, who were
11 the officers of DSMI when it was formed?
12 A. Anil Patel and Joseph Casey.
13 Q. Okay. Please spell those for the
14 record.
15 A. Anil Patel is A-N-I-L, P-A-T-E-L.
16 Joseph Casey is J-O-S-E-P-H, C-A-S-E-Y.
17 Q. Okay. What did -- what office did
18 Mr. Patel hold?
19 A. He's treasurer.
20 Q. This is at the beginning I'm asking.
21 A. Correct.

Deposition of Michael Wade

Page 17

1 Q. Okay. How about Mr. Casey? What
2 office did he hold at the beginning?
3 A. Secretary.
4 Q. Any other officers at the beginning of
5 DSMI's formation?
6 A. No.
7 Q. Okay. Have there been any changes in
8 the officers of DSMI since the beginning?
9 A. No.
10 Q. Okay. So you've had three officers,
11 president, secretary, treasurer, and yourself,
12 Mr. Patel, and Mr. Casey serving in those
13 capacities? That has not changed from April 1993
14 to the present; is that correct?
15 A. Yes.
16 Q. All right. Now when DSMI was
17 organized in April of '93, who was on the board
18 of directors then?
19 A. Ed Grogan.
20 Q. Please spell it for the record.
21 A. Grogan is G-R-O-G-A-N, I believe;

Page 18

1 George Via, V-I-A; and Mike Grove, G-R-O-V-E.
2 Q. How about yourself? Were you a
3 nonvoting member at that time -- member of the
4 board, that is?
5 A. I think that's consistently been true.
6 Q. Okay. So there were four directors at
7 the beginning of DSMI's existence, Mr. Grogan,
8 Mr. Via, Mr. Grove, and then yourself as
9 nonvoting; is that correct?
10 A. Right.
11 Q. All right. Now describe for us how,
12 if at all, this has changed from April of '93 to
13 the present in terms of changes in directors,
14 changes in number of directors, et cetera. How
15 has the composition of the Board of DSMI changed,
16 if at all, since April of 1993 to the present?
17 A. Well, we have totally different
18 directors now, actually. Those gentlemen are all
19 gone, so I don't -- do you want a list of the
20 current ones?
21 Q. I want you to take me through

Page 19

1 chronologically and tell me who was substituted
2 for whom and when, if you can remember. Let's
3 start with this. Has the number of directors
4 consistently stayed at three from April of '93 to
5 the present?
6 A. No, recently there was a fourth added.
7 Q. When I say "three," I mean three
8 voting obviously?
9 A. Right.
10 Q. Okay. And when was the fourth added?
11 A. I don't know the exact date.
12 Q. Within the last two years?
13 A. Yes.
14 Q. Okay. So you had three voting
15 directors up until approximately the last two
16 years and then there became a fourth member; is
17 that correct?
18 A. It's -- yes, it's been more recent
19 than two years.
20 Q. All right. That's why I said
21 approximately because you were uncertain, I

Page 20

1 gather. What do you do for tie breakers?
2 A. We have not had a tie.
3 Q. Okay. Who was the fourth member
4 recently added?
5 A. Benjamin Schneider, S-C-H-N-E-I-D-E-R.
6 Q. Okay. Looking first at Mr. Grogan,
7 did his place on the board change? Was he
8 replaced at a certain point in time?
9 A. He was.
10 Q. When was that and who replaced him?
11 A. I actually can't tell you either one
12 of those. I can't remember the gentleman's name
13 who replaced him.
14 Q. Do you remember when he was replaced?
15 A. Not specifically, no.
16 Q. Do you remember why he was replaced?
17 A. He retired.
18 Q. Okay. And then someone else came on
19 board, I gather?
20 A. Right.
21 Q. You can't remember his name?

Page 21

1 A. Right.
2 Q. And was that person replaced at a
3 certain point in time?
4 A. Yes.
5 Q. By whom?
6 A. By Ward Reed, R-E-E-D.
7 Q. Okay. When did Mr. Read come on
8 board?
9 A. I would guess '97.
10 Q. Okay. And has he stayed on board to
11 the present?
12 A. Yes.
13 Q. Does he presently serve on the board?
14 A. Yes.
15 Q. Okay. Let's go through the same
16 process with Mr. Via.
17 A. Via retired as well.
18 Q. When?
19 A. I don't remember that either.
20 Q. Okay. Who succeeded him?
21 A. Steve Chappell, C-H-A-P-P-E-L-L.

Page 22

1 Q. Okay.
2 A. I would guess --
3 Q. And has Mr. Chappell served
4 continuously since he replaced Mr. Via?
5 A. Yes.
6 Q. So Mr. Chappell is a present member of
7 the board?
8 A. Yes.
9 Q. How about Mr. Grove? Same process.
10 A. He retired within the last year.
11 Q. Okay. So he served continuously on
12 the DSMI board until the last year when he
13 retired; is that correct?
14 A. Correct.
15 Q. And then he was replaced by whom?
16 A. Grant Clark, C-L-A-R-K.
17 Q. Okay. Now as to all of these
18 gentlemen who have served as members of the DSMI
19 board, including yourself as a nonvoting member,
20 how are they appointed to the board? How did
21 they come to get their positions as members of

Page 23

1 the DSMI board?
2 A. I believe they're appointed by the
3 Telcordia or Bellcore board.
4 Q. Okay. Has DSMI since April of '93 had
5 just one shareholder?
6 A. Yes.
7 Q. And is that Bellcore, now known as
8 Telcordia?
9 A. Yes.
10 Q. Has DSMI ever had any other
11 shareholder or more than one shareholder at any
12 time?
13 A. No.
14 Q. Okay. Do any of these members of the
15 board, Grogan, Via, et cetera -- all those that
16 you have named, do they have any affiliations
17 with Bellcore, now Telcordia, or the Reboks?
18 MR. JENSEN: Are you asking about
19 present affiliations?
20 BY MR. SMITH:
21 Q. Have they had -- did they have

Page 24

1 affiliation or had they had affiliations at any
2 time while serving on the board of DSMI?
3 A. I wouldn't know that. I don't know.
4 Q. What about Mr. Grogan? Did you know
5 him?
6 A. Uh-huh, yes.
7 Q. Did he have a job other than serving
8 on the DSMI board while he was serving on the
9 DSMI board?
10 A. Well, they -- he was a Bellcore
11 employee.
12 Q. Okay. What did he do at Bellcore
13 while he served on the DSMI board?
14 A. Which one are we talking about?
15 Q. Grogan.
16 A. Grogan was a financial officer at
17 Bellcore.
18 Q. Okay. And was he a financial officer
19 at Bellcore at all times that he served on the
20 DSMI board?
21 A. Yes.

Page 25

1 Q. Okay. Did he have any relationship
2 other than his Bellcore employment with any of
3 the Reboks?
4 A. I wouldn't know.
5 MR. JENSEN: You mean RBOCs?
6 MR. SMITH: I like to call them
7 Reboks.
8 MR. JENSEN: That's an athletic
9 company, isn't it?
10 MR. SMITH: That's why I like to call
11 them that.
12 BY MR. SMITH:
13 Q. How about Mr. -- was it Reed who
14 replaced Grogan? You couldn't remember who
15 replaced Grogan?
16 A. Right.
17 Q. Do you remember whether this person
18 whose name we don't have had any affiliation with
19 Bellcore?
20 A. He was the financial officer.
21 Q. No. Going back, you said Grogan was

Page 26

1 succeeded by a gentleman whose name you can't
2 recall.
3 A. Right.
4 Q. Even though you can't recall that
5 person's name, can you recall whether that person
6 had any affiliation with Bellcore while he served
7 on the DSMI board?
8 A. He was the financial officer at
9 Bellcore.
10 Q. Okay. How about Mr. Reed? Are you
11 going to tell me that he was the financial
12 officer at Bellcore too?
13 A. Uh-huh, yes.
14 Q. This is the financial officer of
15 Bellcore position on the DSMI board? It's kind
16 of like the Supreme Court where we have people
17 from the west and we have a woman and so forth.
18 That's a joke.
19 How about Mr. Via? While he served on
20 the DSMI board, did he have a position with
21 Bellcore?

Page 27

1 A. Yes.
2 Q. What was that position?
3 A. He was a -- I think it was called
4 customer services vice president.
5 Q. Okay. To your knowledge did he have
6 any position or affiliation with any of the RBOCs
7 other than his employment at Bellcore while he
8 served on the DSMI board?
9 A. I wouldn't know.
10 Q. Same question about Mr. Chappell.
11 While he served on the DSMI board, was he
12 employed by Bellcore?
13 A. Yes.
14 Q. And what position?
15 A. He actually has a software development
16 group. I'm not sure what the title is.
17 Q. And do you know whether he had any
18 affiliation with any RBOC aside from his
19 employment at Bellcore while he was serving on
20 the DSMI board?
21 A. No, I don't.

Page 28

1 Q. Okay. How about Mr. Mike Grove?
2 While he served on the DSMI board, was he
3 employed by Bellcore?
4 A. Yes, he was.
5 Q. What was his position?
6 A. He was general counsel.
7 Q. Okay. For Bellcore?
8 A. For Bellcore.
9 Q. And Mr. Clark, who replaced Mr. Grove.
10 While Mr. Clark served on the board of DSMI, was
11 he an employee of Bellcore?
12 A. Yes.
13 Q. And what was his position during that
14 time at Bellcore?
15 A. He was general counsel.
16 Q. Okay. Did either Mr. Clark or
17 Mr. Grove have affiliations with any of the RBOCs
18 aside from their employment at Bellcore while
19 they were serving on the DSMI board?
20 A. I wouldn't know.
21 Q. Okay. Mr. Schneider. Has he been

Page 29

1 employed by Bellcore while he's been serving on
2 the DSMI board?

3 A. Yes.

4 Q. What does he do at Bellcore?

5 A. Software development group.

6 Q. Okay. Does he have any affiliation
7 with any of the RBOCs?

8 A. Again, I wouldn't know.

9 Q. How about you? While you've been
10 serving on the DSMI Board, have you had any
11 employment at Bellcore?

12 A. No.

13 Q. How many employees does DSMI have
14 today?

15 A. Six.

16 Q. Who are they and what do they do?

17 A. Myself is one. I've already mentioned
18 Anil Patel and Joseph Casey. There's Eric Chuss,
19 C-H-U-S-S. He does industry interface work for
20 us. We have Nancy Kinsey, K-I-N-S-E-Y, supports
21 billing and billing hot line activities. We have

Page 30

1 Ellen Goodman, G-O-O-D-M-A-N, who handles sort of
2 office activities.

3 Q. Has DSMI at any time had more than six
4 employees?

5 A. No.

6 Q. Has it had fewer than six employees at
7 any time?

8 A. Yes.

9 Q. Okay. When was that and how many?

10 A. The minimum we've ever had was five,
11 but we've gone back and forth between five and
12 six a few times.

13 Q. All right. In order to perform its
14 business functions, does DSMI use manpower from
15 anywhere else in the Bellcore system or RBOC
16 system?

17 MR. JENSEN: Wait a second. I'm going
18 to object to that question, first of all, because
19 it's confusing, vague, and ambiguous and,
20 secondly, because it assumes a fact I don't think
21 is the truth or certainly not in evidence and.

Page 31

1 that is, there's an identity between Bellcore and
2 the Bell System or the RBOCs. You need to
3 clarify that.

4 BY MR. SMITH:

5 Q. I wasn't assuming anything. The
6 question simply was, in order to get the job done
7 at DSMI, whatever that job may have entailed over
8 the years, has DSMI at any time drawn on manpower
9 outside of DSMI and within Bellcore or any
10 affiliated entity?

11 MR. JENSEN: I think you need to
12 explain what you mean by "affiliated entity" if
13 you're going to include that.

14 BY MR. SMITH:

15 Q. Let's just start with Bellcore.

16 A. Well, I'm not sure what you mean by to
17 get its job done again. I mean, in terms of our
18 job responsibilities, our responsibilities are to
19 support toll free services. We do that
20 ourselves.

21 Q. Okay. What about to develop

Page 32

1 improvements to the software in the database? Do
2 you six guys -- have you always done that among
3 yourselves?

4 A. We're not responsible for that
5 activity.

6 Q. Okay. Was it Chutz, C-H-U-T-Z, the
7 gentleman who was the industry interfacier?

8 A. Chuss, C-H-U-S-S.

9 Q. Mr. Chuss, what does his job entail?

10 A. He handles a lot of the issues related
11 to industry activities primarily associated with
12 the SMS/800 web site. That's the bulk of his
13 activities, actually.

14 Q. Okay. When DSMI was formed, what was
15 its job responsibility?

16 A. We provide day-to-day management and
17 oversight of the SMS/800 database services.

18 Q. Okay. Has that remained constant
19 since April of '93?

20 A. Yes.

21 Q. Okay. What specifically does that

Page 33

1 mean?

2 A. I'm not sure what you're asking.

3 Q. Well, you said that you administered
4 the SMS/800 service, and what specifically --
5 break that down for me. Be a little more
6 concrete. What does that entail?

7 A. We provide oversight of the vendors
8 who provide the services. We work with the
9 industry to address industry concerns and
10 industry issues. We coordinate plans for
11 expansion of the system or enhancement of the
12 system.

13 Q. What else?

14 A. We answer telephone -- I mean, we
15 answer telephones. We do all kinds of things.
16 We participate in depositions.

17 Q. You get sued and sue. That's a joke
18 too. How often does the DSMI board of directors
19 meet?

20 A. Annually.

21 Q. Just once a year? Does it meet more

Page 34

1 often than that?

2 A. Not usually, no.

3 Q. Let me put it this way. Do the bylaws
4 require meetings more often than once a year for
5 the DSMI board?

6 A. No.

7 Q. And from what you're telling me, I
8 gather that basically all they have met since '93
9 to the present is once a year?

10 A. That's correct.

11 Q. Okay. Have there been any times
12 through that period, '93 to the present, where
13 they've met more than once a year that you can
14 remember?

15 A. No.

16 Q. Okay. Have you attended every single
17 board meeting of the DSMI board since its --
18 since DSMI was formed in '93?

19 A. I'm not sure. I may have missed one.

20 Q. Okay. Does DSMI have in-house
21 counsel?

Page 35

1 A. Yes.

2 Q. Okay. Who is that? Is it more than
3 one attorney or is it just one attorney?

4 A. It's more than one attorney.

5 Q. Okay. So DSMI then has more than six
6 employees. You have an attorney or two or three.
7 How many attorneys are we talking about?

8 A. Two.

9 Q. And what are their names?

10 A. Louise Tucker, T-U-C-K-E-R, and John
11 Braun, B-R-A-U-N.

12 Q. And are these attorneys employees of
13 DSMI?

14 A. No.

15 Q. Who employs these employees?

16 A. Telcordia.

17 Q. Does Telcordia employ attorneys in
18 addition to Ms. Tucker and Mr. Brown?

19 A. Yes.

20 Q. Are these just the two Telcordia
21 attorneys that are designated to assist DSMI

Page 36

1 then?

2 A. Yes. -

3 Q. When you say "in-house," you mean that
4 you tap into the Telcordia legal staff -- at
5 least DSMI taps into Telcordia's legal staff for
6 assistance? Is that a fair statement?

7 A. Yes.

8 Q. Has DSMI over the years since its
9 organization used any attorneys on the Telcordia
10 staff other than these two?

11 A. No.

12 Q. Do these two attorneys -- Ms. Tucker
13 and Mr. Braun, do they serve in any capacity as
14 officer or director at Telcordia in addition to
15 their function as counsel?

16 A. I wouldn't know that. I don't know.

17 Q. Okay. When DSMI has to make a
18 decision in connection with litigation, such as
19 this case with Beehive, describe the
20 decision-making chain of command at DSMI.

21 MR. JENSEN: I'm going to object to

Deposition of Michael Wade

Page 37

1 that question. I think that goes beyond the
2 scope of permissible discovery.
3 Go ahead and answer.
4 THE WITNESS: We work with our counsel
5 and the board of directors as necessary.
6 BY MR. SMITH:
7 Q. Well, you only meet once a year with
8 the board you said. So what if something comes
9 up six months away from your board meeting? Then
10 who decides or how is the decision made at DSMI?
11 A. It's based on advice from counsel. We
12 work together, and we make a decision.
13 Q. I want you to be a little more
14 descriptive for me. For example, what was the
15 decision-making process in July of 1998 when you
16 got Judge Jenkins' order requiring transfer of
17 the 629 numbers to Beehive? How is the decision
18 made at that point whether to abide that order,
19 how to do it if you're going to follow it? Does
20 Michael Wade make that decision after
21 consultation with one of these attorneys? Are

Page 38

1 you the man or did you go somewhere else for
2 input? Is there a process? Was a process
3 followed?
4 MR. JENSEN: I'm going to object to
5 these multiple questions, first of all, because
6 they are multiple and, secondly, because you
7 haven't made it clear whether you're talking a
8 general process or what actually happened in July
9 of 1993. You're going to need to clarify before
10 he can answer.
11 MR. SMITH: Okay. That's a good
12 clarification. Floyd, and I appreciate that.
13 BY MR. SMITH:
14 Q. I was going on like that just so that
15 you understand what I'm trying to know from you,
16 Mr. Wade. Let me rephrase the question. Has
17 there been a general way that you have made
18 decisions at the management level of DSMI
19 regarding litigation-type issues since DSMI was
20 formed? Do you follow a general protocol or
21 pattern in doing so historically speaking?

Page 39

1 MR. JENSEN: For all decisions? What
2 decisions are you talking about?
3 BY MR. SMITH:
4 Q. I'm asking over the lifetime of DSMI.
5 Has there been some general pattern or protocol
6 that's been followed when litigation-type issues
7 have arisen?
8 A. No, I don't think so. I think it's
9 sort of case by case.
10 Q. Okay. Let's go back to this concrete
11 instance in July of 1998. Do you remember when
12 Judge Jenkins entered his order requiring DSMI to
13 transfer the 629 numbers back to Beehive? Do you
14 recall that?
15 A. I know it happened.
16 Q. Okay. And at that point, what did
17 DSMI do to respond to that order in terms of
18 dealing with it, following it, et cetera? What
19 was the decision-making process at that point?
20 A. I'm still not clear what you're
21 asking.

Page 40

1 Q. Did you go to your board of directors
2 to get advice at that point, Mr. Wade? Did you
3 go to someone outside the board of directors for
4 instructions? Did you decide by yourself what to
5 do? What happened?
6 MR. JENSEN: Again, you're asking
7 multiple questions. Do you want to take them one
8 at a time?
9 BY MR. SMITH:
10 Q. I'm asking one question, which is,
11 what was the decision-making process that was
12 used to respond to that situation by DSMI?
13 A. I'm confused because I don't know that
14 there was a decision to be made there. There was
15 a court order, and we abided by it.
16 Q. Okay. What steps did you take after
17 July 13, 1998, to follow the order? When did you
18 get a copy, can you remember?
19 A. I have no idea.
20 Q. Shortly after the order was entered,
21 did you get a copy?

Deposition of Michael Wade

Page 41

1 A. I have no idea. I know I've seen the
2 order.
3 Q. Can you remember when you first
4 learned of it? Was it in July of '98?
5 You have to answer audibly.
6 A. I have no idea.
7 Q. Do you remember what you did to
8 respond to the order and to follow it after you
9 got it, if anything?
10 A. What was -- was the July '98 order
11 that you're speaking of the one that said that
12 the numbers were to remain in unavailable status
13 with --
14 Q. No, that was the order from Judge
15 Jenkins before the appeal to the Tenth Circuit
16 where he required DSMI to give the 629 numbers
17 back, to restore them to Beehive.
18 A. The July '98 order that you're talking
19 about is an order that said we were supposed to
20 give the numbers back to Beehive?
21 Q. The numbers back, yes.

Page 42

1 A. I don't remember that order.
2 Q. Okay. We've got a copy here
3 somewhere, I'm sure.
4 A. I don't remember when it occurred in
5 sequence, when it occurred in time.
6 Q. What is it that you can't remember,
7 the timing or that you were ordered to do that?
8 A. Both, actually. My recollection is at
9 one point in time there was an order, and then we
10 appealed it.
11 Would this be a good time to take a
12 break?
13 MR. JENSEN: Yes.
14 MS. TUCKER: It's okay with me.
15 (Pause in the proceedings.)
16 BY MR. SMITH:
17 Q. Okay. What I want you to do for the
18 record now, Mr. Wade, is with words draw for us
19 an organizational chart so we can see what this
20 family of companies looks like and the relation
21 to each other. And starting at the top, the

Page 43

1 holding entity or parent or grandparent of DSMI
2 would be what company? Is that SAIC?
3 A. Are you talking currently?
4 Q. Yes.
5 A. Yes.
6 Q. What does SAIC stand for?
7 A. Science Applications International
8 Corporation, I believe.
9 Q. Is that the entity that bought
10 Bellcore, now known as Telcordia, from the RBOCs?
11 A. Yes.
12 Q. Okay. When did that sale occur? When
13 did it close, if you know?
14 A. November of '97, I believe it was.
15 Q. Okay. And SAIC owns 100 percent of
16 Bellcore, now Telcordia; is that correct?
17 A. I believe so, yes.
18 Q. Okay. And Telcordia owns 100 percent
19 of DSMI; is that correct?
20 A. Uh-huh.
21 Q. Does DSMI have any subsidiaries?

Page 44

1 A. No.
2 Q. Does DSMI have any brother or sister
3 entities?
4 A. I'm not sure what you mean.
5 Q. Well, another way to ask that is, does
6 Bellcore, now Telcordia, have any other
7 subsidiaries?
8 A. Oh, yes.
9 Q. They do?
10 A. Yes.
11 Q. It does, I mean. What are those?
12 A. Oh, I -- I know of one. I believe --
13 actually, I'm not sure if that's still in
14 existence even.
15 Q. Tell me that name.
16 A. There was a Bellcore International,
17 but I'm pretty sure there are other subsidiaries.
18 I have no idea what the names of them are.
19 Q. Have you dealt with anybody from any
20 of these other subsidiaries while you've served
21 as president of DSMI?

Page 45

1 A. No.
2 Q. Okay. Do you know how many there are?
3 A. No.
4 Q. Do you know what business any one of
5 them may be in, and, if so, which one?
6 A. No.
7 Q. The answer is no?
8 A. Correct.
9 Q. Okay. How about SAIC? Does it have
10 any brother or sister entities that would be
11 uncles or aunts to Bellcore/Telcordia?
12 A. I don't understand. I mean, SAIC owns
13 Telcordia completely.
14 Q. Does SAIC have any other subsidiaries?
15 A. Yes.
16 Q. Okay. Do you know the names of those?
17 A. No.
18 Q. Okay. Do you know what line of
19 business any one of them is in?
20 A. I know there's a joint partnership
21 with someone related to oil exploration in

Page 46

1 South America.
2 Q. Anything else you know?
3 A. No.
4 Q. As president of DSMI, have you ever
5 had occasion to deal with any of the subsidiary
6 entities of SAIC other than Bellcore?
7 A. No.
8 Q. Now I noticed from the pleading that
9 Ray, Quinney filed in this contempt matter, their
10 opposition to the motion for an order to show
11 cause, that there is a reference in there
12 describing DSMI as an "agent" for the RBOCs in
13 handling this thing we call the SMS/800 tariff.
14 Is that an accurate statement?
15 MR. JENSEN: I'll object. You're
16 asking for a legal conclusion.
17 MR. SMITH: I'm not asking for him to
18 speak as a lawyer or to give a legal opinion.
19 BY MR. SMITH:
20 Q. Is it your understanding that DSMI has
21 an agency relationship with the RBOCs in

Page 47

1 connection with this tariff?
2 A. I don't know what an "agency
3 relationship" is.
4 Q. Well, is there some relationship
5 between DSMI and the RBOCs in connection with the
6 tariff?
7 A. There's a contract between DSMI and
8 the RBOCs for support of SMS/800.
9 Q. Okay. Is that true today?
10 A. Yes.
11 Q. Okay. And has that been true since
12 the inception of the tariff in the organization
13 of DSMI?
14 A. I'm not sure how to answer that.
15 Q. Well, April of '93 when DSMI was
16 organized, at that point in time what -- did it
17 have a contract of some sort with the RBOCs to
18 handle the SMS/800 tariff?
19 A. At that point DSMI worked under a work
20 order arrangement with the RBOCs. Work orders
21 were governed by their relationship with

Page 48

1 Bellcore.
2 Q. Okay. So there was not an umbrella
3 agreement at that point in time that was in
4 writing at that point in time between DSMI and
5 the RBOCs?
6 A. There were the work orders.
7 Q. Just the work orders, okay. Did there
8 come a time when a formal written agreement
9 independent of or in addition to work orders was
10 made between DSMI and the RBOCs in connection
11 with this tariff?
12 A. Yes.
13 Q. And when was that time?
14 A. Late '97, I believe.
15 Q. So from '93 to '97 it was just a work
16 order basis?
17 A. I believe that's correct.
18 Q. In '97 we get a written contract; is
19 that correct?
20 A. Yes.
21 Q. Did the fact that you got it in '97 --

Page 49

1 when I say "you," I mean DSMI. Did that have
2 anything to do with the sale of Bellcore to SAIC?
3 **A. Yes.**
4 **Q. Okay. Did you participate in the**
5 **negotiations attending that sale?**
6 **A. The sale of Telcordia?**
7 **Q. Yes.**
8 **A. No.**
9 **Q. Did you participate in the**
10 **negotiations of the -- let's just call it the**
11 **agency contract so we know what we're talking**
12 **about together. In '97 between DSMI and the**
13 **RBOCs?**
14 **A. I participated in the contract**
15 **negotiations between DSMI and the RBOCs, yes.**
16 **Q. Was that agency contract executed, and**
17 **did it become effective when the sale closed**
18 **between SAIC and the RBOCs, that is, the sale of**
19 **Bellcore?**
20 **A. It was -- the contract -- again, I'm**
21 **not clear what the meaning of the word "agency"**

Page 50

1 **is here. The contract was effective with the**
2 **sale of Bellcore, yes.**
3 **Q. Why did the RBOCs want that contract**
4 **with DSMI if they were selling Bellcore based on**
5 **your participation in the negotiation of the**
6 **agreement?**
7 **MR. JENSEN: I'll object to the**
8 **question. You are asking Mr. Wade to tell you**
9 **the intent of the RBOCs. I'm not sure that**
10 **you've laid a foundation that he would even know**
11 **that.**
12 **MR. SMITH: Well, a foundation is that**
13 **he participated in the negotiation of the deal,**
14 **and I'm asking for his understanding based on**
15 **that negotiation. I'm not asking him to get into**
16 **the head of an RBOC or a Rebok.**
17 **BY MR. SMITH:**
18 **Q. That's the question.**
19 **A. Again, I don't know how I would know.**
20 **I mean --**
21 **Q. You'd know because you negotiated the**

Page 51

1 contract with the RBOCs. "You" being president
2 of DSMI.
3 **MR. JENSEN: Don't argue with the**
4 **witness, please. He said he doesn't know, so I**
5 **think you'll have to live with that.**
6 **BY MR. SMITH:**
7 **Q. You didn't get any idea during the**
8 **course of negotiation and finalization and**
9 **execution of this contract with the RBOCs why**
10 **they wanted the contract? You picked up no clue**
11 **during the course of those negotiations?**
12 **A. I assume they wanted our support**
13 **services.**
14 **Q. Okay. And what consideration flows to**
15 **the RBOCs under this contract?**
16 **A. What do you mean by "consideration"?**
17 **Q. What do they get? What's the quid pro**
18 **quo back and forth?**
19 **A. They get our support services.**
20 **Q. And what does DSMI get?**
21 **A. Money.**

Page 52

1 **Q. Okay. How much money?**
2 **A. It varies year to year.**
3 **Q. And what is variable in terms of the**
4 **amount?**
5 **A. A little over a million.**
6 **Q. That's the variable or that's the**
7 **amount generally you get?**
8 **A. That's the amount per year.**
9 **Q. And it doesn't vary?**
10 **A. It varies from year to year.**
11 **Q. Okay. So give me the terms. How much**
12 **do you get, and then what are the bells and**
13 **whistles on top of that? Is it a flat right?**
14 **What is it?**
15 **A. It's an annual price split in 12**
16 **monthly payments.**
17 **Q. Okay. You say there's a variable.**
18 **What is the variable in that?**
19 **A. The rate changes year to year.**
20 **Q. I see. What is the calculation for**
21 **determining the rate from year to year? How is**

Page 53

1 the rate determined from year to year? Is that a
2 percentage of something or what? What's the
3 formula?

4 A. It was agreed to in the initial
5 contract what the rates would be for the first
6 five years.

7 Q. A million dollars a year for the first
8 five years, is that what is says?

9 A. It grew from year to year.

10 Q. Is there a formula for determining the
11 growth or is it a step up that's fixed in the
12 contract?

13 A. It's fixed in the contract.

14 Q. After the five years, is the contract
15 renewed or what?

16 A. There's no mechanism in it for
17 defining a cost after five years.

18 Q. Is the life of the contract five
19 years?

20 A. It was a three-year contract.

21 Q. It was a three-year contract that

Page 54

1 provided for a five-year payout?

2 A. It was a three-year contract that had
3 annual prices for the first five years. It has
4 extensions or the ability to be extended built
5 into it.

6 Q. Okay. Is it possible to get a copy of
7 this contract?

8 A. That's a legal question.

9 MR. SMITH: May we?

10 MR. JENSEN: I don't believe it was
11 asked for in the request for production.

12 MR. SMITH: No, but I'm asking now.

13 MS. TUCKER: It is private and subject
14 to propriety markings.

15 MR. SMITH: I noticed that some of
16 your board of directors meetings were marked that
17 way too, but you gave those to us, so I'm
18 wondering if we could get a copy. It would
19 shorten the examination.

20 MR. JENSEN: For the record, we tried
21 to redact the materials that were given to you.

Page 55

1 We may not have redacted everything that we
2 should have, but our intent is that materials
3 that are marked propriety or confidential by DSMI
4 should be treated that way with respect to this
5 litigation. We would hope that we could reach an
6 agreement with you and your client for a
7 stipulated protective order for confidential
8 materials, but if not then we'll file a motion
9 for protective order.

10 MR. SMITH: We're talking about this
11 contract, right?

12 MR. JENSEN: We're talking about the
13 contract and we're talking also about any other
14 materials that DSMI has designated as propriety
15 or confidential.

16 MR. SMITH: So is that a yes if we're
17 willing to stipulate to protective order as to
18 the agency agreement?

19 MR. JENSEN: Yes, we have to talk
20 about the terms of the protective order.

21 BY MR. SMITH:

Page 56

1 Q. All right. Is SAIC a publicly-held
2 company?

3 A. I'm not sure what that means? You
4 mean traded, stock traded?

5 Q. Yes.

6 A. No.

7 Q. Do you know who the shareholders of
8 SAIC are?

9 A. It's employee owned.

10 Q. Okay. How many employees are we
11 looking at here?

12 A. I have no idea.

13 Q. Do you know whether it files reports
14 with the Securities and Exchange Commission?

15 A. No.

16 Q. That's an I don't know, correct?

17 A. Yes.

18 Q. At the present time, how many RespOrgs
19 are there?

20 A. Approximately 270, 280.

21 Q. Okay. At the beginning of the SMS/800

Page 57

1 tariff, how many RespOrgs were there?
2 **A. About a 135, I think.**
3 Q. Okay. Going to the beginning, again,
4 April of '93 with the 135 initial RespOrgs, do
5 you know whether any one of them had more than --
6 had control of more than ten percent of the then
7 existing pool of toll free numbers?
8 **A. Yes.**
9 Q. Okay. Which ones did?
10 **A. AT&T certainly did. I don't know**
11 **about the others.**
12 Q. You don't know the names of the others
13 or you don't know whether there were others with
14 more than ten percent?
15 **A. Both.**
16 Q. Okay. Same question as to the present
17 time with the 270. Is there any one of these 270
18 presently existing RespOrgs that has more than
19 ten percent control of the existing pool of toll
20 free numbers?
21 **A. I don't know that for a fact.**

Page 58

1 Q. What's your best estimate?
2 MR. JENSEN: I'll object. You're
3 asking him to speculate. He said he didn't know.
4 MR. SMITH: I'm asking him to
5 estimate, not speculate. And please speak up a
6 little bit.
7 THE WITNESS: There are probably two,
8 maybe three that had more than ten percent of the
9 base.
10 BY MR. SMITH:
11 Q. And probably who might those be?
12 **A. AT&T, MCI, and Sprint.**
13 Q. Okay. How about five percent?
14 **A. Oh, I have no idea.**
15 Q. All right. Is there a record at DSMI
16 that keeps track of this type of percentage?
17 **A. No.**
18 Q. Does DSMI in the regular course of
19 business monitor this sort of percentage that I'm
20 asking about?
21 **A. No.**

Page 59

1 Q. What does DSMI do in its regular
2 course of business to monitor whether numbers
3 assigned to RespOrgs are in use?
4 **A. We don't monitor that. We have no**
5 **visibility to that.**
6 Q. No visibility to that. What does that
7 mean for Alan Smith, a lay person?
8 **A. All I can tell you is whether a record**
9 **is active in the SMS. Whether there's actual**
10 **traffic on it in the network, I don't know.**
11 Q. Okay. Let me rephrase my question.
12 Speaking of today, the here and now, what, if
13 anything, does DSMI do to monitor whether numbers
14 assigned to any given RespOrg are subscribed for
15 by a customer?
16 **A. Again, we don't have any visibility to**
17 **that. We wouldn't know.**
18 Q. Does that mean you don't have
19 responsibility or that you don't have procedures
20 in the regular course to look into that sort of
21 thing? I'm just trying to understand your words.

Page 60

1 **A. It means it's not possible to tell.**
2 Q. All right. Same question, only
3 instead of asking about what subscribers are out
4 there in terms of numbers assigned to a RespOrg,
5 only now use, whether a subscriber is using the
6 number. Same answer, no visibility for that?
7 **A. Correct.**
8 Q. Okay. And has that always been true
9 since April of 1993 to the present?
10 **A. Yes.**
11 Q. Same answer to both questions, whether
12 a number is subscribed for and whether subscribed
13 for numbers are used by the customer?
14 **A. Yes.**
15 Q. No capacity to know at the DSMI end
16 and nothing done on the regular course of
17 business to look into that, correct?
18 **A. There's no technical capability to do**
19 **that.**
20 Q. Okay. Has DSMI ever considered that
21 it had a mandate or a responsibility to develop

Page 61

1 the technical capacity to look into either of
2 those two things?

3 A. No.

4 Q. Now you are familiar with the 629
5 numbers, as we call them, that are what we're
6 here about today, correct, Mr. Wade?

7 A. I know of 629 numbers.

8 Q. If I just call them the 800-629
9 numbers that are in contest with Beehive, that's
10 a common point of reference between you and me as
11 we talk, right?

12 A. Okay.

13 Q. Okay. I want you to tell me beginning
14 in April of 1996 and coming forward to the
15 present the name of any RespOrg that has asked to
16 be assigned any of these 629 numbers.

17 A. I wouldn't know that.

18 Q. Okay. Is there a record somewhere at
19 DSMI that tells me that?

20 A. No.

21 Q. Now we've asked for those records in

Page 62

1 our document request. You were aware of that?

2 A. I don't believe you have. I mean,
3 maybe you're not asking the same question.

4 Q. We asked for records that identified
5 any request from any RespOrg for these 629
6 numbers during that period of time.

7 A. Number assignments in the SMS are done
8 on a mechanized basis. People could be in the
9 system right now trying to reserve an 800-629
10 number, and we'd have no record of it.

11 Q. Well, the document request asked for
12 not only physical pieces of paper, but anything
13 that's in the computer as well. Are you telling
14 me that there's no way for you to determine from
15 your computer whether these requests have
16 occurred, and, if so, by whom and when?

17 A. Those requests occur hundreds of
18 thousands of times a day for toll free numbers.

19 Q. Hypothetically. But as to these 629
20 numbers that are at issue in this proceeding, how
21 does someone like me find out whether a RespOrg

Page 63

1 has requested one of those 629 numbers to be
2 assigned, and, if so, when?

3 A. You don't.

4 Q. There is no technical way to find out
5 that information?

6 A. No. We keep daily logs of activities
7 for a week at a time, but at the end -- I mean,
8 they're so voluminous that at the end of the week
9 they're just cycled out.

10 MR. SMITH: Why don't you mark that.

11 (Wade Deposition Exhibit Number 1 was
12 marked for identification.)

13 BY MR. SMITH:

14 Q. I'm showing you what's been marked as
15 Exhibit Number 1, Mr. Wade. Can you identify
16 that for the record, please?

17 A. Yes. I mean, what --

18 Q. Is this a declaration that you signed
19 on or about August 6th of 1998 for submission to
20 the Federal District Court for the District of
21 Utah, Central Division, in the litigation with

Page 64

1 Beehive?

2 A. Uh-huh, yes.

3 Q. And did you prepare Exhibit 1?

4 A. Exhibit A?

5 Q. Deposition Exhibit 1.

6 A. Oh, yes, I'm sorry.

7 Q. Is that your affidavit?

8 A. Yes, it is.

9 Q. Did you sign that under oath?

10 A. Yes, I did.

11 Q. All right. Now look at paragraph 4.3
12 on Page 2. Do you have that in view?

13 A. Yes.

14 Q. It's where you're discussing the
15 remaining 629 numbers that were assigned to
16 RespOrgs other than Beehive subsequent to May 29,
17 1996. Do you see that?

18 A. Uh-huh.

19 Q. Okay. These are the 629 numbers that
20 are part of this contest with Beehive, aren't
21 they? That's what this affidavit is about,

Page 65

1 correct?

2 A. Yes.

3 Q. All right. What is this responsible
4 organization change authorization certifying that
5 RespOrgs had received written authorization from
6 the service subscriber of such numbers
7 authorizing the RespOrg change? Is that a
8 physical piece of paper?

9 A. Yes, it is.

10 Q. Okay. And is that type of piece of
11 paper submitted by a RespOrg to DSMI every time
12 one of these 629 numbers is requested?

13 A. It's submitted to the SMS/800 help
14 desk.

15 Q. Okay. In light of this, did you want
16 to alter the previous testimony that you gave?

17 A. No. Were you talking about numbers
18 being assigned or were you talking about RespOrg
19 changes?

20 Q. I was talking about numbers being
21 assigned. My question -- and maybe you

Page 66

1 misunderstood what I was getting at or maybe I
2 just didn't speak very well, which is often the
3 case. My question was, I want to know from March
4 of 1996 to the present each and every time that a
5 RespOrg has asked for an assignment of one of
6 these 629 numbers and how many times has that
7 occurred and when and what was the RespOrg
8 involved. Then the examination went on, and I
9 asked you for records of that, how would I know
10 and what records were available, et cetera.
11 Apparently there are records that would tell me
12 this information, correct?

13 MR. JENSEN: I'm going to object.
14 You're mischaracterizing his testimony. I think
15 maybe you're not drawing the distinction that
16 exists or should be drawn between a request for
17 assignment of a number and what this affidavit
18 refers to because I'm not sure they're the same
19 thing, and it sounds like you're assuming they're
20 the same thing.

21 BY MR. SMITH:

Page 67

1 Q. All right. I appreciate that
2 distinction. So you have certifications from
3 RespOrgs when someone who holds one of the 629
4 numbers wants to change RespOrgs, correct?

5 A. Yes.

6 Q. And that's what you're eluding to in
7 paragraph 4.3, correct?

8 A. Correct.

9 Q. But you don't have records when a
10 RespOrg asks for an assignment of one of the 629
11 numbers; is that correct?

12 A. That's correct. Assuming, again, the
13 assignment means --

14 Q. To the RespOrg?

15 A. -- they want a number, they want an
16 800-629 number.

17 Q. Okay. While I have you looking at
18 Exhibit 1, Mr. Wade, look at paragraph 2. You
19 see the reference in the second line there where
20 it says "Employees of DSMI and/or the entity that
21 manages the SMS/800 database"? Do you have that

Page 68

1 in view?

2 A. Uh-huh.

3 Q. What is that entity that manages the
4 SMS/800 database?

5 A. Well, on a day-to-day basis, that's
6 DSMI.

7 Q. This says "and/or." Is there an
8 entity apart from DSMI that manages the database?

9 A. The tariff itself is the
10 responsibility of the RBOCs.

11 Q. This says "entity." Did you have a
12 particular entity in mind when you wrote
13 paragraph 2?

14 A. No.

15 Q. What did you mean by "entity" there?

16 A. I meant the RBOCs, I believe.

17 Q. Okay. You say you believe that's what
18 you meant. Do you have a specific recollection
19 of what you meant?

20 A. No.

21 Q. Is there an organization or an entity

Page 69

1 that is distinct from or affiliated with DSMI
2 that has management responsibility for the
3 SMS/800 database?

4 **A. Again, I just said that. The tariff**
5 **is the responsibility of the RBOCs.**

6 Q. And is there an entity other than the
7 RBOCs and DSMI that has management responsibility
8 for the database?

9 **A. No.**

10 Q. You gave us as part of this proceeding
11 minutes of an SMS management team, for example.

12 **A. Uh-huh.**

13 Q. Is that an entity that's different
14 from either the RBOCs and DSMI that has
15 management responsibility for the database?

16 **A. That is the representatives of the**
17 **RBOCs.**

18 Q. Okay. So what I think I hear you
19 saying, and correct me if I'm wrong, is that the
20 RBOCs have constituted this SMS management team
21 to work with DSMI to manage the database? Is

Page 70

1 that a fair statement?

2 **A. The RBOCs have responsibility for the**
3 **tariff. They provided SMS/800 services via an**
4 **FCC tariff. It's an RBOC tariff.**

5 Q. Do they fulfill that responsibility in
6 part through this SMS management group?

7 **A. Those are the RBOC representatives who**
8 **manage the service.**

9 Q. What is the formal name for that
10 outfit? Does it have one?

11 **A. The SMS management team.**

12 Q. How is it comprised today?

13 **A. One member from each RBOC.**

14 Q. Okay. Does DSMI have membership on
15 the team?

16 **A. No.**

17 Q. Does DSMI send someone to the
18 meetings?

19 **A. Yes.**

20 Q. On a regular basis?

21 **A. Yes.**

Page 71

1 Q. Okay. What is the composition of this
2 management team? I'll just call it the SMS
3 management team. Has it been the same since
4 April of '93, namely, one designee from each
5 RBOC?

6 **A. Yes.**

7 Q. Okay. And what is the relationship in
8 terms of control between this management team and
9 DSMI when it comes to decision making as far as
10 administration of tariff? Does the management
11 team control DSMI?

12 **A. We work under contract to the RBOCs,**
13 **and they are the team that manages that contract.**

14 Q. So you follow orders from this
15 management team? "You" meaning DSMI.

16 **A. Well, I'm not sure that that's a**
17 **blanket statement.**

18 Q. Insofar as the tariff administration
19 is concerned? Is that a fair statement?

20 **A. Tariff is theirs, yes.**

21 Q. So DSMI does what this management team

Page 72

1 says to do? Is that a fair statement?

2 **A. Uh-huh, yes.**

3 MR. JENSEN: You're speaking with
4 respect to the management of the tariff?

5 MR. SMITH: Yes.

6 BY MR. SMITH:

7 Q. I noticed that Exhibit A to your
8 affidavit, which is Deposition Exhibit 1, is a
9 cover letter and some policy guidelines. Do you
10 have that in view?

11 **A. Exhibit A?**

12 Q. Excuse me. Maybe it's Exhibit B.

13 **A. A Bellcore letter?**

14 Q. Yes, and policy guidelines behind it.

15 **A. Okay.**

16 Q. Did you work at Bellcore during the
17 period that the cover letter there, which is
18 Exhibit B to Deposition Exhibit 1, was drafted?

19 **A. Yes.**

20 Q. Did you participate in the formulation
21 of that cover letter?

Page 73

1 A. No.

2 Q. Did you participate in the formulation
3 of the guidelines that are attached to the cover
4 letter?

5 A. No.

6 Q. Do you have any personal knowledge as
7 far as -- when I say "personal knowledge," I mean
8 direct participation or input into the
9 formulation, drafting of that letter or
10 guidelines.

11 A. No.

12 Q. Where does your knowledge come from
13 insofar as the letter in the guidelines are
14 concerned?

15 A. My knowledge of what?

16 Q. Well, you've testified about this
17 document in your affidavit, which is Exhibit 1.
18 Paragraphs 5.2, 5.3, 5.4, 5.5, 5.6 are all about
19 this letter and the guidelines, and I'm wondering
20 where your personal knowledge -- or you said you
21 didn't have personal knowledge. Where your

Page 74

1 knowledge came from that you relied upon to give
2 the testimony that's in those paragraphs. Did
3 somebody tell you this, you read it in a
4 newspaper article. what?

5 A. I think it depends on which section
6 you're talking about.

7 Q. Okay. 5.2.

8 A. 5.2, I was --

9 Q. Where did you hear or how did you know
10 or think you know that in 1989 numbers were
11 assigned to Beehive?

12 A. I don't remember where that came from.

13 Q. How do you know that Bell
14 Communications Research made the assignment to
15 Beehive?

16 A. Bellcore was the numbering plant
17 administrator at that time frame.

18 Q. Yes. But --

19 A. If there was an assignment made,
20 Bellcore would have made it.

21 Q. You're inferring from their status as

Page 75

1 administrator at that time that they must have
2 been the ones who assigned to Beehive, correct?

3 A. They were the only company that
4 assigned 800-NXX codes.

5 Q. Do you have personal knowledge
6 respecting the assignment from wherever it came
7 to Beehive of these 629 numbers? Did you
8 participate in that assignment process?

9 A. No.

10 Q. Were you involved in any way?

11 A. In the assignment?

12 Q. Yes.

13 A. No.

14 Q. Do you know somebody who was?

15 A. I probably know the group who did it.

16 Q. Have you talked with anyone in that
17 group about the assignment of the 629 numbers to
18 Beehive?

19 A. When?

20 Q. Any time. At any time have you had
21 any conversation with somebody who might have

Page 76

1 been involved in this assignment to Beehive?

2 A. Yes.

3 Q. About the assignment process to
4 Beehive?

5 A. I don't know that.

6 Q. Okay. You say in 5.2 that the
7 assignment was made pursuant to this advisory
8 letter and guidelines. How do you know that?

9 A. My understanding is that all 800-NXX
10 codes were assigned based on this guideline.

11 Q. Again, you don't have any personal
12 knowledge as to any -- as to the assignment to
13 Beehive?

14 A. No.

15 Q. You're just making an assumption based
16 on what you think was the general practice at the
17 time? Is that a fair statement?

18 A. I think that was the practice at the
19 time.

20 Q. And you are assuming from that that
21 that practice was followed in Beehive's case? Is